

REPRESENTATIVE FOR PETITIONER:
Kevin A. Halloran, Attorney

REPRESENTATIVE FOR RESPONDENT:
Frank J. Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Volume Services, Inc.,)	Petition No.: 71-004-13-1-7-20200-15
)	
Petitioner,)	Business Tangible Personal Property ¹
)	
v.)	County: St. Joseph
)	
St. Joseph County Assessor,)	Township: Clay
)	
Respondent.)	Assessment Year: 2013

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

September 15 , 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ The related parcel number is 71-002-55385-00.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Was business personal property assessable to the Petitioner for the March 1, 2013, assessment year?

PROCEDURAL HISTORY

2. The St. Joseph County Assessor notified the Petitioner that the business personal property in question had been assessed at \$557,980 for the 2013 assessment year.² The Petitioner filed its Notice to Initiate an Appeal (Form 130-Short), on November 20, 2014. On May 4, 2015, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board. The Board has jurisdiction over this appeal under Ind. Code § 6-1.5-4-1.
3. On April 26, 2017, Administrative Law Judge (ALJ) Joseph Stanford held a hearing on the Form 131. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified at the hearing:

For the Petitioner: John E. Stockholm, Regional Vice-President for
Centerplate/Volume Services.

For the Respondent: Patricia St. Clair, Chief Deputy Assessor,
Winnie Libertowski, Personal Property Clerk.³

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1: "Request for Proposal 06-022" dated November 9, 2010,

² While the Board can only assume the Assessor accomplished this via a Form 133/PP, Notice of Assessment/Change, neither that document nor any testimony regarding the date it may have been mailed to the Petitioner are part of the record. Further, neither party offered any argument that the opposing party's actions or filings were not timely. Therefore, both parties essentially waive the issue of timeliness. *See Word of His Grace Fellowship, Inc. v. State Bd. of Tax Comm'rs*, 711 N.E.2d 875, 878-879 (Ind. Tax Ct. 1999) (finding that an issue not raised by a party at the administrative level was waived).

³ Ms. Libertowski was sworn but did not testify.

- Petitioner Exhibit 2: “Agreement” between Notre Dame du Lac and Service America Corporation dated April 12, 2011,
- Petitioner Exhibit 3: Addendum Petitioner’s Exhibit 2 dated April 13, 2011,
- Petitioner Exhibit 4: “Agreement” between Notre Dame du Lac and Service America Corporation dated September 12, 2012,
- Petitioner Exhibit 5: Notre Dame Unamortized Investment as of June 2012,
- Petitioner Exhibit 6: Asset listing for “Unit 00843,”
- Petitioner Exhibit 7: “Unit 00843” disposals,
- Petitioner Exhibit 8: Letter and check from David Harr to Hadi Monovar of Centerplate dated October 10, 2012,
- Petitioner Exhibit 9: Letter from Tiffany Irwin to St. Joseph County Assessor dated May 10, 2013,
- Petitioner Exhibit 10: Letter from Georgene Niessen to St. Joseph County Assessor dated November 20, 2014,
- Petitioner Exhibit 11: Email from Lori Bush to Jeremy Didley dated June 9, 2015.

- 6. The Respondent did not submit any exhibits.
- 7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A: Form 131 with attachments,
 - Board Exhibit B: Hearing notice dated February 22, 2017,
 - Board Exhibit C: Hearing sign-in sheet,
 - Board Exhibit D: Notice of Appearance for Kevin A. Halloran,
 - Board Exhibit E: Notice of Appearance for Frank J. Agostino.
- 8. The personal property in question is located at Joyce Center Room A-11, Gate 6, in Notre Dame.
- 9. The PTABOA determined an assessed value of \$557,980. The Petitioner requested an assessed value of \$0.

ADMINISTRATIVE REVIEW AND THE PARTIES’ BURDENS

- 10. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

11. The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis.”)
12. If the taxpayer makes a *prima facie* case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

FINDINGS OF FACT

13. The relevant facts are not in dispute. In April of 2011, the Petitioner responded to a “Request for Proposal” (the contract) issued by the University of Notre Dame (the University) because the University was looking to outsource their food and beverage services at its sporting facilities. Ultimately, the Petitioner was awarded the contract. The contract stated the Petitioner was to provide food, personnel, and certain personal property, including the “running” of electrical services to equipment. The contract required the Petitioner to pay the University a direct percentage of revenue as a commission. The Petitioner made an initial capital investment of “over one million dollars.” *Stockholm testimony; Pet’r Ex. 1, 2, 3.*
14. In September of 2012, the University entered into a “huge capital project” entitled Cross Road Project. The University sought to fund the project with federal bonds, and consequently, because of certain tax laws, had to restructure the contract with the Petitioner. More specifically, the University purchased the assets related to the contract from the Petitioner on October 10, 2012, for a “book value” of \$969,161.42. After the contract was restructured, the Petitioner collected a flat management fee with “some incentives.” rather than collecting the revenue, *Stockholm testimony: Pet’r Ex. 4, 5, 6, 7, 8.*
15. Accordingly, as of March 1, 2013, the Petitioner was not in possession of any business personal property in St. Joseph County. Therefore, the Petitioner was not required to file

a personal property tax return and the current assessment is void as a matter of law.
Halloran argument; Stockholm testimony.

16. The Respondent agrees. Because the Petitioner did not own any business personal property on the assessment date in question, it was not required to file a tax return. Additionally, the Respondent acknowledged the Petitioner sent a letter dated May 10, 2013, requesting its account be “deleted.” *Agostino argument; St. Claire testimony (referencing Pet’r Ex. 9).*

ANALYSIS

17. Personal property includes all tangible personal property (other than real property) that is being: (A) held in ordinary course of a trade or business; (B) held, used or consumed in connection with the production of income; or (C) held as an investment. *See Ind. Code § 6-1.1-1-11.*
18. Indiana’s personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of the year unless an extension of time to file is obtained. *See Ind. Code § 6-1.1-3-7; Ind. Code § 6-1.1-3-1.5; 50 IAC 4.2-2-2.*
19. Here, the Petitioner offered substantial uncontested evidence and related testimony that it did not own the business personal property in question on March 1, 2013. Additionally, the Petitioner notified the Respondent of this fact on May 10, 2013, and requested its account be “deleted.” The Respondent agreed and did not even attempt to rebut the Petitioner’s case. Because the Petitioner was not in possession of the personal property in question on March 1, 2013, it was not required to file a personal property tax return. Consequently, the Board strikes the 2013 personal property assessment of \$557,980 and finds the assessment shall be reduced to \$0.

SUMMARY OF FINAL DETERMINATION

20. The Petitioner made a prima facie case that the Respondent did not rebut. The assessed value of the business personal property must be reduced to \$0.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.